INDEX

	PAGE
Preliminary Analysis	1
Brief in Opposition	2
Conclusion	14
Appendix	15

CITATIONS

Cases:

Aetna Casualty and Surety Co. v. United States, 170 F(2) 469 (C.A. 2)	3, 13
Butler v. Gorely, 146 U.S. 303	4
Employers Fire Insurance Co. v. United States, 167 F(2) 655 (C.A. 9)	3, 8
Erwin v. United States, 97 U.S. 392	4
Grace et al v. United States 76 F Supp. 178 (D.C. Md.)	13
Goodman v. Niblack, 102 U.S. 556	4
Insurance Company of North America v. United States, 76 F Supp. 951, (E.D. Va.)	8, 10, 13
Luckenbach v. W. J. McCahan, 248 U.S. 139	10
Niagara Fire Insurance Co. v. United States, 76 F Supp. 850 (S.D. N.Y.)	4, 8
Old Colony Insurance Co. v. United States, 168 F (2) 931 (C.A. 6)	3
Phoenix Life Insurance Co. v. United States, 3 F Supp. 112 (D.C. Conn.)	9
Seaboard Air Line Ry. v. United States, 256 U. S. 655	4
State Farm Mutual Liability Insurance Co. v. United States, (C.A. 1) Civil No. 4371, Feb. 1, 1949	3, 13

The Plow City, 122 F(2) (C.A. 3) cert. den. 315 U.S. 798 10

United States v. American Tobacco Co., 166 U.S. 468 ..... 4, 9

United States v. Chicago, Rock Island & Pac. Ry. Co., 171 F(2) 377 (C.A. 10) 3

United States v. Donald Harding, et. al., 171 F(2) 550 (C.A. 10) 3

United States v. Hill, et. al., 171 F(2) 404, (C.A. 5) 2

United States v. South Carolina Highway Dept., et al., 171 F(2) 893 (C.A. 4) 3, 6, 11, 13

U. S. Fidelity and Guaranty Co. v. United States, 56 F Supp. 452 (S.D. N.Y.), Aff'd in 152 F(2) 46 (C.A. 2) 9

Wabash R. R. Co. v. United States, 178 F. 5, 6 (C.A. 8) 8

Yorkshire Insurance Co. and The Home Insurance Co. v. United States, 171 F(2) 374 (C.A. 3) 3, 13

Statutes:

Federal Tort Claims Act, Act of August 2, 1946, c 753, Title IV, 60 Stat. 842 et seq, 28 USC 921 et seq 1, 15

28 USC 931 (a) 7, 15

28 USC 943 ..... 7, 16

Assignment of Claims Act, R.S. 3477, 31 USC 203 1

Suits on Admiralty Act, 46 USC 741 et seq 9

Tucker Act, 28 USC 250 (1) 9

Foreign Claims Act, 31 USC 224 (d) 9

Small Tort Claims Act, 31 USC 215 10

Legislative Reorganization Act, 60 Stat. at Large, Sect. 131 4

Emergency Relief Appropriations Act, 56 Stat. 936 10

Miscellaneous:

Report of Joint Committees on the Reorganization of Congress to Accompany, S. 2177 (Sen. Rep. No. 1400), 79th Cong. 2nd Session 1946 5

Private Law 529, 77th Cong., Chap. 663, 2nd Sess. (H.R. 5651) Approved Dec. 2, 1942 6

Private Law 276, 77th Cong., Chap. 82, 2nd Sess. (H.R. 3118) Approved Feb. 16, 1942 6

Private Law 430, 78th Cong., Chap. 510, 2nd Sess. (S. 1278) Approved Dec. 6, 1944 6

Private Law 266, 77th Cong., reported in U. S. Stat. at Large, Vol. 54, part 2, p. 1242 (H.R. 3363) 6

Public Law 142, 77th Cong., Chap. 341, 1st Sess. (H.R. 3523) Approved July 30, 1941 6

Gellhorn and Schenck, Tort Actions against the Federal Government 47 Col. L.R. 722, 726 (1947) 8

The Federal Tort Claims Act, 56 Yale L.J. 534, 535 and note 10 (1947) 9

Armstrong and Cockrill, The Federal Tort Claims Bill 9 Law and Contemp. Prob. 327, 328 and notes 1 and 6 (1942) 9

36 Ops. Attny Gen'l 553 (1932) 10

19 Comp. Gen'l 503 (1939) 10

61 HLR 1076, 1077 11

Va. L.R., August 1948, p. 721 11

Sutherland, Statutory Construction (3rd Ed) Vol. 1, Sect. 2012 12

In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 618

UNITED STATES OF AMERICA, *Petitioner*

v.

WORLD FIRE AND MARINE INSURANCE COMPANY

BRIEF OF RESPONDENT IN OPPOSITION TO PETITIONER'S PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

The respondent has no objection to petitioner's statement of the opinion below, the jurisdiction, the question presented, the statutes involved, nor to the statement.

PRELIMINARY ANALYSIS

The petitioner has advanced the following arguments in support of the writ:

1. That the Assignment of Claims Act, R.S. 3477, 31 USC 203[1], bars a subrogee from asserting a claim against the Government, where the claim asserted is only a portion of the original claim of the subrogor.

2. That Congress did not intend by the passage of the Federal Tort Claims Act, 28 US 931 et seq[2], to impliedly repeal the Assignment of Claims Act, as shown by

[1]Hereinafter referred to as the "Assignment of Claims Act."

[2]Hereinafter referred to as the "Federal Tort Claims Act" and cited with reference to its original codification in 28 USC 921 et seq.

(a) The possibility of multiple suits with different venue on a claim if a partial subrogee may maintain an action against the Government.

(b) Defeat of the Government's right of counterclaim against the subrogor or original claimant if a partial subrogee may maintain an action against the Government.

(c) The possibility of the increase in the number of persons with whom the Government must deal in order to discharge its tort liability if a partial subrogee may maintain an action against the Government.

We shall argue:

1. That the Assignment of Claims Act does not bar an action by a partial subrogee against the Government.

2. That even if the Assignment of Claims Act bars an action by a partial subrogee, said act is impliedly repealed by the Federal Tort Claims Act.

BRIEF IN OPPOSITION

The petitioner does not contend that the claim of the respondent arises in a manner other than by operation of law. It contends, in spite of its admission that there is an exception for claims arising by operation of law which this Court has carved out the Assignment of Claims Act (Petition pp. 8, 9), that this exception should not be made and the claim should be barred by the act where the claimant is asserting only a portion of the original claim, as in the instant case. One circuit court has sustained this contention[1], and it has been repudiated by seven other circuit

[1]See opinion of Sibley, J in *United States of America v. Hill et al* 171 F(2) 404, 405, (C.A. 5) McCord, J, concurring, and dissenting opinion by Hutcheson, J.

courts[2]. In support of this contention the petitioner speculates as to certain procedural problems which may arise if the present action may be maintained, and urges these problems as a basis for a Congressional intent *not* to impliedly repeal the Assignment of Claims Act by the passage of the Federal Tort Claims Act. This argument is not to be answered by a statement that the great majority of the circuits found it without merit. The answer to petitioner's argument is to be found in these elements: legislative history and the language of the Federal Tort Claims Act, the treatment of partial subrogees under other acts waiving sovereign immunity, and the practical results if a partial subrogee is not allowed to assert a claim.

In discussing these elements we will assume for the purpose of argument that *but for* the Federal Tort Claims Act, the Assignment of Claims Act bars a subrogee from asserting a portion of the original claim against the Government even though the partial claim arises by operation of law, as in the instant case. In other words, if the present action may be maintained, the Assignment of Claims Act is impliedly repealed insofar as it bars the claim of a partial subrogee. At the outset of our discussion, however, we should like to comment on the petitioner's statement that "no decision of this Court has ever countenanced such a subdivision of a contested claim". (Petition p. 9.) It should be pointed out that this Court has never passed upon the question of whether the Assignment of Claims Act

[2] *State Farm Mutual Liability Insurance Co. v. United States of America* (C.A. 1) Civil No. 4371, February 1, 1949; *Aetna Casualty and Surety Co. v. United States of America* 170 F(2) 469 (C.A. 2); *Yorkshire Insurance Co. and The Home Insurance Co. v. United States of America* 171 F(2) 374 (C.A. 3); *United States of America v. South Carolina Highway Department et al* 171 F(2) 893 (C.A. 4); *Old Colony Insurance Co. v. United States of America* 168 F(2) 931 (C.A. 6); *Employers Fire Insurance Co. v. United States of America* 167 F(2) 655 (C.A. 9); *United States of America v. Donald Harding et al* 171 F(2) 550 (C.A. 10); *United States of America v. Chicago, Rock Island & Pac. Ry. Co.* 171 F(2) 377 (C.A. 10).

bars a partial assignee of a claim which devolves on the claimant by operation of law. This Court has uniformly held, however, that the Assignment of Claims Act does not bar a claim which arises by operation of law. *Erwin v. United States* 97 U.S. 392, 397; *Goodman v. Niblack* 102 U.S. 556, 560-561; *Butler v. Gorely* 146 U.S. 303, 311; *Seaboard Air Line Ry. v. United States* 256 U.S. 655, 657. See: *United States v. American Tobacco Co.* 166 U.S. 468, 474.

1. Legislative History of the Federal Tort Claims Act.

The most thorough treatment of the background and history of this act is found in the opinion by Judge Medina in *Niagara Fire Insurance Co. v. United States.* 76 F Supp 850 (S.D.N.Y.). After his development of the background leading up to the act, Judge Medina concludes that all factors point to the intent of Congress to relieve itself of the burden of handling *all* of the ever increasing tort claims against the government, be they made by an original claimant or by a partial subrogee. Perhaps the most striking factor upon which his conclusion is based is seen in the facts of the very case he decided. In the Niagara case, the plaintiffs, all of whom were subrogees, had applied to Congress for private relief legislation, as was the common practice before the Federal Tort Claims Act.[1] A bill was introduced in 79th Congress embodying the relief, was then submitted to the Committee on Claims and after an exhaustive investigation was reported out favorably on July 24, 1946, which was just nine days prior to the enactment of the act. Since the Legislative Reorganization Act, 60 Stat. at Large 812, Sect. 131, provided that no private bill could be passed for payment of a claim for which suit could be brought under the Federal Tort Claims Act, no action was taken by Congress on the favorably reported bill, nor was it reintroduced in the 80th Congress. Does

[1] See below, p. 6, n. 1.

not this failure to act show a clear Congressional intention that partial subrogees could sue the Government in tort?

The Report of the Joint Committees on The Reorganization of Congress to Accompany S. 2177 (Sen. Rep. No. 1400, 79th Cong., 2d Sess. 1946), of which the Federal Tort Claims Act is a part, likewise throws light on the Congressional intent. It is there stated:

> "Congress is overburdened by many local and private matters which divert its attention from national policy making and which it ought not to have to consider. It functions as a common counsel for the District of Columbia. It serves as a tribunal for the settlement of private claims. It spends much time on pension bills .... Title IV (of S. 2177) provides for the administrative and judicial adjustment of tort claims against the United States which Congress is poorly equipped to settle." (p.7).
>
> "For the information of the Senate the following statement .... covering the history of this legislation and a summary of existing law is incorporated and made a part of this report:
>
> " 'History of Legislation
>
> " '***For many years the present system has been subjected to criticism, both as being unduly burdensome to the Congress and as being unjust to the claimants, in that it does not accord to injured parties a recovery *as a matter of right* but bases any award that may be made *on considerations of grace.* Moreover, it does not afford a well-defined continually operating machinery for the consideration of such claims ....' " (emphasis ours)
>
> " 'As a result of the statutes briefly summarized above, the Government is subject to suit in contract, on admiralty and maritime torts, and for patent infringement. On the other hand, no action may be

> maintained against the Government in respect to any common-law tort. The existing exemption in respect to common-law torts appears incongrous. Its only justification seems to be historical. With the expansion of governmental activities in recent years, it becomes especially important to grant to private individuals the right to sue the Government in respect to such torts as negligence in the operation of vehicles'." (pp. 30-31).

And so we see that the primary purpose of this act was to relieve Congress of the burden of handling a multitudinous number of claims by the passage of private legislation, and to afford the claimants the machinery of the federal courts so that recovery could be had "as a matter of right" rather than based "on considerations of grace". Did Congress intend to reserve for itself the continued handling of claims of partial subrogees, as contended by the petitioner? Its failure to act on the claims of the subrogees who later became the plaintiffs in the Niagara case is its answer. Many of the claims presented to Congress before the passage of the Federal Tort Claims Act were doubtless made by insurance companies who were subrogated to the rights of their insureds and Congress was therefore well aware of the claims of subrogees at the time of its passage.[1] "Bills to reimburse insurance companies for losses sustained as a result of torts of federal employees have just as much merit and cause just as much trouble to Congress as bills to reimburse the party originally injured." *United States of America v. The South Carolina Highway Department* 171 F(2) 893, 898 (C.A. 4).

[1]For examples of legislation passed for the benefit of subrogees before the Federal Tort Claims Act see: Private Law 529, 77th Cong., chap. 663, 2nd. Sess. (H.R.5651) approved Dec. 2, 1942; Private Law 276, 77th Cong., chap. 82, 2nd Sess. (H.R. 3118) approved Feb. 16, 1942; Private Law 430, 78th Cong., chap. 510, 2nd. Sess. (S 1278), approved Dec. 6, 1944; Private Law 266, 77th Cong., reported in U. S. Stat. at Large, Vol. 54, part 2, p. 1242 (H.R. 3363); Public Law 142, 77th Cong., chap. 341, 1st Sess. (H.R. 3523) approved July 30, 1941.

2. Language of the Federal Tort Claims Act.

We quote the critical language, which is found in 28 USC 931 (a): "Subject to the provisions of this chapter, the United States district courts . . . shall have exclusive jurisdiction to hear, determine and render judgment on *any* claim against the United States . . . under circumstances where the United States, *if a private person* would be liable to the claimant." (emphasis ours) No distinction is made as to the type of claim which may be made, be it asserted by a partial subrogee or otherwise. Judgment may be rendered on "any" claim. This broad and sweeping language drops completely the shield sovereign immunity of the United States for liability in tort and the Government is placed upon an exact parity with a private litigant. Are not these procedural problems which the petitioner urges as a basis for a bar to the instant action the same problems with which a "private person" would be faced?

As a further expression of Congressional intent to allow a partial subrogee to assert a claim, we respectfully direct the Court's attention to Section 943 of the Federal Tort Claims Act. In this section Congress has designated twelve categories of claims which cannot be made. Claims made by subrogees are *not* among those there designated. Of what import is this? As shown in Section 931 (a), Congress employed sweeping and broad language to waive sovereign immunity. Any tort claim arising out of negligence may be made against the Government if it could be made against a private party. Following the broad language of this section is placed a section which lists twelve types of claims which may not be made. The time honored doctrine of statutory construction, *expressio unius est exclusio alteruis*, forces even the tyro to this irresistable conclusion: if Congress had intended to exclude the claims of partial subrogees, it

would have placed such claims in the section expressly given to exclusions. The logic is inescapable that the failure to designate claims of subrogees among the exclusions is "positive evidence that none was intended". See *Insurance Company of North America v. United States* 76 F. Supp. 951, 953 (E.D. Va.). The syllabus of the Court in *Wabash R.R. Co. v. United States* 178 F. 5, 6 (C.A. 8) seems peculiarly apt to substantiate our position:

> "When a legislative body has made a grant or given a permission with a specific exception or limitation and has made no other exceptions or limitations, a conclusive presumption arises that it intended to make none, and it is not the province of the courts to do so."

The petitioner asks: Why then, if Congress intended by the Federal Tort Claims Act to allow claims by partial subrogees, did it not specifically say so? The act itself answers this question by its unqualified waiver of sovereign immunity followed by the exceptions thereto. Failure to make specific mention of subrogees was not mere inadvertence. As pointed out above,[1] Congress was fully aware of subrogated claims because much of the private relief legislation had been for the benefit of subrogees. In fact, the attention of the House Committee was specifically directed to this point by the Assistant Attorney General. See opinion of Orr, J. in *Employer's Fire Insurance Company, et al. v. United States*, 167 F.(2) 655, 657 (C.A. 9). Furthermore, the act was not the product of eleventh hour draftsmanship. It was carefully, deliberately and skillfully written by draftsmen who were acutely aware of the existing Congressional burden of handling claims by subrogees. See *Niagara Fire Ins. Co. v. United States*, 76 F. Supp 850, 854 (S.D. N.Y.); Gellhorn and Schenck, Tort Claims Actions against the Federal Government, 47 Col. L. R. 722, 726,

[1] See supra p. 6, n. 1.

(1947); The Federal Tort Claims Act, 56 Yale L. J. 534, 535, and note 10 (1947); Armstrong and Cochrill, The Federal Tort Claims Bill, 9 Law and Contemp. Prob. 327, 328, and notes 1 and 6 (1942). The very nature of legislative draftsmanship required the draftsmen to draw the act in this manner. They adopted the only technique which could effectively lend itself to a practical administration of the act by the courts: An unqualified waiver of the sovereign immunity followed by a designation of the cases in which there was no waiver. It should be apparent even to an amateur draftsman the impossibility of designating *all* types of tort claims the act was intended to cover rather than broadly stating it covered all claims and then making exceptions. If the former method were used, would it not be inevitable that many types of claims would be inadvertently omitted which the act was meant to include?

3. Treatment of Partial Subrogees Under Other Acts Waiving Sovereign Immunity.

It has been uniformly held that partial subrogees may maintain an action against the Government under the Suits in Admiralty Act. 46 USC 741 et seq. *U. S. Fidelity & Guaranty Co. v. United States of America* 56 F Supp. 452 (S.D. N.Y.), aff'd in 152 F (2) 46 (C.A. 2); *Phoenix Insurance Co. v. United States of America* 3 F Supp. 112 (D.C. Conn.). Actions by subrogees have also been allowed under the Tucker Act 28 USC 250(1). *United States of America v. American Tobacco Co.* 166 US 468. As in the Federal Tort Claims Act, neither act contains a provision allowing suits by subrogees. Brief mention should also be made of the Foreign Claims Act, 31 USC 224 (d). This act authorizes the Secretaries of War and Navy to appoint a claims commission to dispose of claims caused by the United States Armed Forces in foreign countries. The act

expressly provided coverage for "claims of insureds but excluding claims of subrogees". This act is a graphic illustration of the manner in which Congress expresses its intent to exclude claims of partial subrogees from a waiver of soverign immunity: *it excludes them specifically.* See also 36 Ops Attn'y Gen'l 553 (1932) and 19 Comp Gen'l 503 (1939) in connection with the rights of subrogees to sue the Government under the Small Tort Claims Act, 31 USC 215, and Emergency Relief Appropriations Act, 56 Stat. 936.

4. The Practical Results if a Partial Subrogee is Not Allowed to Bring an Action Under the Federal Tort Claims Act.

Judge Bryan in *Insurance Company of North America* 76 F. Supp 951, 953 (E.D. Va.) suggests two methods by which partial subrogees could legitimately recover if they are not allowed the benefit of the act. The first method is "by the insurer's stipulation that the insured sue the United States as a prerequisite to recovery against the insurer." This would seem to unduly penalize one who was forehanded enough to carry insurance and defeat the very purpose of insurance coverage. The second suggested method is "by resorting to the method followed in *Luckenback v. W. J. McCahan* 248 US 139, 39 S. Ct. 53, 63 L Ed 170, I ALR 1522 and in *The Plow City,* (3 Cir.) 122 F(2) 816, certiorari denied 315 US 798, 62 S. Ct. 579, 86 L Ed 1199, of making the payment by the insurance company a loan to the insured and thereafter bringing an action against the United States in the name of the insured."

Another result will be that Congress must again shoulder the burden of handling the numerous claims of partial subrogees and pass relief legislation for their benefit. If the petitioner's position is correct this task is once more

dumped into the lap of Congress. As was pointed out in the Committee Report submitted with the Federal Tort Claims Act (quoted supra pages 5 and 6), the purpose of the act was to shift this burden to the courts so that recovery could be had "as a matter of right" rather than "on considerations of grace". Our prognostication is that if this purpose is thwarted, Congress will again attempt to carry out its intent by the passage of a separate bill for the specific benefit of subrogees.

Finally, if a partial subrogee is not entitled to sue under the Federal Tort Claims Act, the result will be that the Government's liability for the torts of its employees will be directly dependent upon the fortuitous circumstance of whether or not the party originally damaged carries insurance. If he does carry insurance, then the Government, the party in the wrong, will be enriched in the amount an innocent party pays for its wrong. Is it suggested that the insurance companies are not hurt by a denial of their claims because their premiums rates are scaled upon losses paid. That is true. But the ones who are hurt are those who carry insurance. It is common knowledge that the amount of subrogation recoveries proportionately decreases the premium rate. Consequently, the denial of such recoveries increases the amount of the premium. See notes in 61 HLR 1076, 1077; Va. L. R. August 1948, page 721. Obviously, then, the exclusion of partial subrogees from the benefit of the Federal Tort Claims Act, as contended by petitioner, results in a financial detriment to those who follow the sound business practice of carrying insurance to protect themselves from loss. Judge Parker in *United States of America v. The South Carolina State Highway Department* 171 F(2) 893, 900 (C.A. 4) states our position in terse fashion:

> "It is inconceivable that the fact that the injured party has insurance should affect his right to recover in tort against the government, or that recovery for property damage should not go to the insurer to the extent that he has reimbursed the injured party rather than to the latter. Certainly it could not have been intended either that a recovery for a loss be denied because the injured party has been prudent enough to insure against it or that recovery be allowed where the insurer has paid the loss, except for his reimbursement."

Thus we have presented what we submit are four compelling reasons showing a clear Congressional intent to allow a partial subrogee to assert a claim against the Government under the Federal Tort Claims Act. In this presentation, as pointed out above, we have admitted for the purpose of argument that there is a conflict between the Federal Tort Claims Act and the Assignment of Claims Act. We have assumed, in spite of the wealth of authority to the contrary, that without the Federal Tort Claims Act a claim of a partial subrogee against the Government is barred by the Assignment of Claims Act. We have made this admission and assumption because if there be such a conflict between the two acts, this conflict is resolved in the light of the history and language of the Federal Tort Claims Act. This history and language demonstrates conclusively that the Assignment of Claims Act is impliedly repealed insofar as it bars the claim of a partial subrogee. "Where a consistent body of laws cannot be maintained without the abrogation of a previous law, a repeal by implication of previous legislation or of the common law is readily found in the terms of a later enactment. . . . Where there is an ambiguity in the statute the legislative intent is

the source of the compromise, but where a conflict is readily seen by an application of the later enactment in accord with that intent, it is clear that the later enactment is intended to supercede the existing law." 1 Sutherland Statutory Construction (3rd Ed) Sect. 2012.

The petitioner, however, contends that there are "affirmative considerations" which are demonstrative of a Congressional intent not to effect an implied repeal of the Assignment of Claims Act. (Petition p. 10.) Though none of these "affirmative considerations" are present in the instant case[1], they are: multiple suits resulting from splitting of causes of action, venue in districts other than that where the original claimant could have brought the action, defeat of the Government's right of counter-claim against the original claimant, and the increase of the number of persons with whom the Government must deal before the final discharge of its tort liability. These considerations present soluble procedural problems and they all have been raised in the courts below. *State Farm Mutual Liability Insurance Co. v. United States of America* (C.A. 1) Civil No. 4371, February 1, 1949; *Aetna Casualty and Surety Co. v. United States of America* 170 F(2) 469, 471 (C.A. 2); *Yorkshire Insurance Co. and Home Insurance Co. v. United States of America* 171 F(2) 374, 375 (C.A. 4); *United States of America v. South Carolina Highway Department et al* 171 F(2) 893, 898 (C.A. 4); *Grace et al v. United States of America* 76 F Supp 174, 178 (D.C. Md.); *Insurance Company of North America v. United States of America* 76 F Supp 951, 954 (E.D. Va.). These courts have found these problems to be capable of procedural solution and we shall not here burden this Court with their reason-

[1]In the instant case there was only one suit in one district, no counterclaim was involved, and the final judgment in the district court was in complete discharge of the Government's liability.

ing. We feel that the answer to these problems does not lie entirely in the fact that they are capable of solution but rests on this fundamental consideration: *they are the same problems with which a private person would be faced.* Congress has unreservedly dropped the cloak of sovereign immunity and has placed the Government on parity with a private litigant. The resulting procedural problems cannot now be urged by the Government as a basis for rising above the level of a private litigant; that basis must find its roots in the legislative history and language of the Federal Tort Claims Act, and in the past interpretation of the wording of other statutes in *pari materia.*

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari be denied.

RODEY, DICKASON AND SLOAN

By PEARCE C. RODEY.

April 1949.

APPENDIX

STATUTES INVOLVED

1. Federal Tort Claims Act, Act of August 2, 1946, c 753, Title IV, 60 Stat. 842 et seq., 28 USC 921 et seq.

A. 28 USC 931 (a)

"Jurisdiction; liability of United States;

(a) Subject to the provisions of this chapter the United States district court for the district wherein the plaintiff is resident or wherein the act or omission complained of occurred, including the United States district courts for the Territories and possessions of the United States, sitting without a jury, shall have exclusive jurisdiction to hear, determine, and render judgment on any claim against the United States, for money only, accruing on and after January 1, 1945, on account of damage to or loss of property or on account of personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant for such damage, loss, injury, or death in accordance with the law of the place where the act or omission occurred. Subject to the provisions of this chapter, the United States shall be liable in respect of such claims to the same claimants, in the same manner, and to the same extent as a private individual under like circumstances, except that the United States shall not be liable for interest prior to judgment, or for punitive damages. Costs shall be allowed in all courts to the successful claimant to the same extent as if the United States were a private litigant, except that such costs shall not include attorneys' fees."

B. 28 USC 943

"Claims exempted from operation of chapter

The provisions of this chapter shall not apply to—

(a) Any claim based upon an act or omission of an employee of the Government, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation be valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a Federal agency or an employee of the Government, whether or not the discretion involved be abused.

(b) Any claim arising out of the loss, miscarriage, or negligent transmission of letters or postal matter.

(c) Any claim arising in respect of the assessment or collection of any tax or customs duty, or the detention of any goods or merchandise by any officer of customs or excise or any other law-enforcement officer.

(d) Any claim for which a remedy is provided by sections 741-752, or 781-790 of Title 46, relating to claims or suits in admiralty against the United States.

(e) Any claim arising out of an act or omission of any employee of the Government in administering the provisions of sections 1-38 of Appendix to Title 50.

(f) Any claim for damages caused by the imposition or establishment of a quarantine by the United States.

(g) Any claim arising from injury to vessels, or to the cargo, crew, or passengers of vessels, while passing through the locks of the Panama Canal or while in Canal Zone waters.

(h) Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights.

(i) Any claim for damages caused by the fiscal operations of the Treasury or by the regulation of the monetary system.

(j) Any claim arising out of the combatant activities of the military or naval forces, or the Coast Guard, during time of war.

(k) Any claim arising in a foreign country.

(l) Any claim arising from the activities of the Tennessee Valley Authority. Aug. 2, 1946, c. 753, Title IV, § 421, 60 Stat. 845."